

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

v.

J.T. POSEY COMPANY.

Defendant.

AND RELATED COUNTERCLAIM.

Civil Action No. 05-10917 PBS

ORAL HEARING REQUESTED

MOTION OF DEFENDANT J.T. POSEY COMPANY, INC.
FOR PARTIAL SUMMARY JUDGMENT ON COUNT I OF POSEY'S
COUNTERCLAIM AGAINST PLAINTIFF THE HIPSAVER COMPANY INC.

Defendant and Counterclaimant J.T. Posey Company, Inc. (“Posey”) hereby moves this Court for partial summary judgment in its favor and against Plaintiff and Counterclaimant The HipSaver Company (“HipSaver”) on Count I of Posey’s counterclaim for false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

The instant motion is made pursuant to Rule 56(a) of the Federal Rules of Civil Procedure which provides that a party seeking to recover upon a claim may, at any time after the expiration of 20 days from the commencement of the action move for judgment on all or any part of the party's claim. Pursuant to Rule 56(c), the motion is based upon the grounds that the pleadings, depositions, answers to interrogatories and available affidavits show that there is no genuine issue as to any material fact and that Posey is

entitled to judgment on Count I of the counterclaim because HipSaver has been, and is, engaged in the dissemination of literally false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

The instant motion will be based upon this notice, the accompanying memorandum of points and authorities, the accompanying Appendix of Exhibits, the accompanying Statement of Uncontroverted Facts, the accompanying declarations, the files and records in this action, the arguments of counsel and such other matters as may be presented to the Court at the hearing on the motion.

The instant motion is being made following a good-faith conference of counsel on December 7, 2008.

Dated: December 11, 2006

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg
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CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

December 11, 2006

/s/ Donald K. Piper
Donald K. Piper